

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARM WORKERS OF AMERICA,	)	
AFL-CIO,	)	
	)	
Respondent,	)	Case No. 77-CL-7-C
	)	
and	)	4 ALRB No. 42
	)	
KELVIN KEENE LARSON,	)	
aka K. K. LARSON,	)	
	)	
Charging Party.	)	

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DECISION AND ORDER

Pursuant to the provisions of Labor Code Section 1146, the Agricultural Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On December 6, 1977, Administrative Law Officer (ALO) James Moore King issued the attached Decision in this case, in which he found that Respondent (UFW) did not restrain or coerce agricultural employees in violation of Section 1154 (a) (1) of the Act by its statements to or conduct toward employee Celia Hernandez on May 4, 1977 when she crossed a UFW picket line at one of the Board's regional offices. Thereafter, the General Counsel and the Charging Party (Employer) each filed exceptions and a supporting brief, and Respondent filed a brief in response to the exceptions.

The Board has considered the record and the attached decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the ALO and to adopt his recommended Order, except for his recommendation

that litigation costs be awarded to Respondent.

Even assuming that this Board has the power to award litigation costs to a respondent exonerated of unfair labor practices, a question left open in S. L. Douglass, 3 ALRB No. 59 (1977), we do not consider that the issues raised by the complaint and the answer were so lacking in merit that prosecution of the case could be characterized as frivolous. Accordingly, we award no litigation costs in this matter.

ORDER

Pursuant to Section 1160.3 of the Agricultural Labor Relations Act, the Agricultural Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

DATED: July 7, 1978

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

CASE SUMMARY

United Farm Workers of America, AFL-CIO      4 ALRB No.42  
(K. K. LARSON)      Case No. 77-CL-7-C

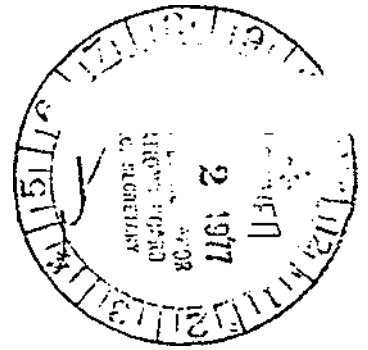
ALO DECISION      After the General Counsel completed its case, the ALO recommended dismissal of a complaint charging the Respondent with violating Labor Code Section 1154(a) (1).

The ALO found that statements made to an employee, as she crossed Respondent's picket line in front of an Agricultural Labor Relations Board office, did not constitute restraint and coercion, and were privileged. The ALO also found that a statement about taking a picture was not established as having been made by a picket, or addressed to the employee. The ALO further found that the employee was not followed by the pickets.

The ALO refused to grant attorneys fees to the Respondent, reasoning that the charge was not frivolous and deserved a hearing. The ALO did award litigation costs.

BOARD DECISION      The Board affirmed the ALO's decision, but refused to award litigation costs to the Respondent. Without determining whether it has the power to award such costs to a respondent, the Board found that the award was unwarranted where, as here, the charge was not frivolous.

This summary is furnished for information only and is not an official statement of the Board.



STATE OF CALIFORNIA  
BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: )  
)  
UNITED FARM WORKERS OF )  
AMERICA, AFL-CIO, )  
)  
Respondent, )  
)  
and )  
)  
KELVIN KEENE LARSON aka )  
K. K. LARSON, )  
)  
Charging Party. )  
\_\_\_\_\_ )  
Case No. 77-CL-7-C

Jorge A. Leon, G.L.A., and Alicia Becerril, G.L.A. ,  
of Coachella, California for the General Counsel

Ellen Greenstone, Esq., and Carolyn Schour, L.W. , of  
Salinas, California for the Respondent

John L . Zenor , Esg . , of Los Angeles, California for  
the Charging Party

DECISION

Statement of the Case

JAMES MOORE KING, Administrative Law Officer: This case was heard  
before me in Coachella, California, on October 11 and 12, 1977. The Notice  
of Hearing with Complaint attached was filed on September 19, 1977. The  
Complaint alleges a violation of Section 1154 (a) (1) of the Agricultural  
Labor

Relations Act, herein called the Act, by the United Farm Workers of America, AFL-CIO, herein called the Respondent. The Complaint is based on a charge filed on May 9, 1977, by K. K. Larson, herein called the Charging Party. A true and correct copy of the original charge was duly served upon the Respondent, which filed its Answer before the Board on September 27, 1977.

At the commencement of the hearing the Respondent moved to dismiss the Complaint on three separate grounds more fully set forth in its Motion to Dismiss Complaint on file herein. I denied the motion for reasons set forth in the hearing transcript.

The General Counsel, assisted by the Charging Party, received a full opportunity to present his case. At the close thereof the Respondent made a motion to dismiss on the ground that the conduct alleged did not even amount to an unfair labor practice. I advised all of the parties of my intention to grant the motion; all parties had an opportunity to argue the motion which I took under submission. After the hearing was adjourned the Charging Party and the Respondent each filed a brief in support of their respective positions.

I have treated Respondent's Motion to Dismiss at the close of the General Counsel's case as analogous to a Motion for Judgment at the close of the other's case in a civil action pursuant to Code of Civil Procedure, Section 631.8.

Accordingly, I have weighed the evidence.<sup>1</sup> Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the parties I make the following:

### Findings of Fact

#### I. Jurisdiction

The United Farm Workers of America, AFL-CIO, is a labor organization representing agricultural employees within the meaning of Section 1140.4 (f) of the Act.

K. K. Larson is engaged in agriculture in Riverside County, California, and is an agricultural employer within the meaning of Section 1140.4 (c) of the Act.

Celia Hernandez was employed by K. K. Larson to thin Thompson grapes on May 4, 1977, on his property in the Coachella Valley. Accordingly, I find that at all relevant times, Celia Hernandez was an agricultural employee within the meaning of Section 1140.4(b) of the Act.

#### II. The Alleged Unfair Labor Practices

The Complaint alleges that the Respondent, by and through its agents, violated Section 1154(a)(1) of the Act by shouting insults at, making derogatory statements to, and physically following Celia Hernandez, who was then engaged in the exercise of her rights protected by Section 1152 of the Act.

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<sup>1</sup> The testimony of the Respondent's witness Roberto Delacruz was not considered in drafting this decision. See *Miller v. Dussault*, 26 Cal. App. 3d 311, 317-13 (1972)

The Respondent contends that the acts charged do not constitute unfair labor practices in violation of Section 1154(a)(1) of the Act. Respondent further denies that it engaged in any unfair labor practices as alleged.

#### Celia Hernandez's Encounter With The Pickets

A regional office of the Agricultural Labor Relations Board is located in a large shopping center with a lot of stores and a large parking area; the address is 49-849 Harrison Boulevard, Coachella, California. A sidewalk separates the store fronts from the parking lot. (See General Counsel's Exhibit IE).

From May 2, 1977, until May 6, 1977, there was picketing outside the entrance to that office calling upon the Board agents to do a better and more vigorous job of enforcing the law. The picketing was organized by the Respondent. On May 4th, from the hours of 11:00 a.m. to about 2:00 p.m. members of Respondent's legal department had joined others who had taken their positions on the picket line which numbered approximately 10 to 15 organizers and supporters altogether.

At approximately 1:00 p.m. on that date, Celia Hernandez was driven by the Charging Party into the parking lot to a space in front of the Thrifty store to the north of the Board's office, at the other end of the shopping center and half-way out in the parking lot. Ms. Hernandez was on her way to the Board's Coachella office to seek guidance concerning

whether or not she was obliged to give her employer, the Charging Party, permission to give out her home address to the Board's agent for possible future use by union organizers. She was going to find out this information not only for herself but also for other agricultural employees with whom she worked in the fields of the Charging Party.

From where Larson had parked his car, she could not see the ALRB office, which was almost at the south end of the line of shops, away from the Thrifty store at the north end of the shopping center with seven stores including a supermarket in between. Celia was almost directly in front of the Karate Studio, about 11 yards north of the Board's office, when she first noticed the pickets who were walking in a circle on the sidewalk in front of the entrance to that office. She saw two white Anglo girls, two Mexicans, one, a young man of eighteen or nineteen and the other an elder man of about forty-five and a little bit chubby and a small Filipino, among others. She observed them singing and carrying a red United Farm Workers union flag, a guitar and some sort of a drum. Ms. Hernandez did not see any one on the picket line carrying a camera. According to the witness Doug Adair, who was a volunteer legal worker for Respondent in charge of the picketing at this particular time, those on the line had been singing union songs and the Spanish religious hymn "De Colores" as well as occasionally chanting and



yelling comments such as "enforce the law" and "Bandito Vendito [Sell-Out]" at specific Board agents whom they felt had held the law up to ridicule.

When the pickets saw Ms. Hernandez approach, they stopped singing and stood aside in different directions. Celia, who, according to her own testimony, had previously broken United Farm Worker union picket lines in 1973 in Coachella Bakersfield, Ducor and Delano, walked through the pickets to get to the door of the Board's office. As she entered the office she heard several voices yelling "scab," "What are you doing here, vendito [sell-out]?" and "Who pay you to tell lies?" Ms. Hernandez did not know which individuals yelled these words because she never looked back as she went through the open glass door and into the Board's office.

Once inside she spoke with a secretary and asked to see Mr. Rodriguez. While waiting for Mr. Rodriguez, Celia sat in a chair close to the northeast corner of the office, a short distance from the demonstrators who were just a few yards on the other side of the all-glass office front wall. However, Ms. Hernandez sat facing the inside of the office while she continued to hear yelling for a couple of minutes outside and to her left. During this first few minutes inside the office she heard someone outside the office say "take a picture." Since she never looked outside the office once she went in, she did not see who made that statement,

nor could she recall whether it was a male or female voice.

When Mr. Rodriguez came to the front of the office, he introduced himself and asked Ms. Hernandez to follow him to, his desk further back into the office where the - two talked for about one-half hour. At the conclusion of the informational conversation, Celia asked Mr. Rodriguez to come to the front door with her to hear the shouting which she anticipated would recur. He accompanied her to the door where he heard shouting by the demonstrators. One phrase he recalled in particular was "vendito [sell-out]"; other shouting consisted of name calling, obscenities and whatever else popped-into the heads of the demonstrators.

He testified further that during this week he heard the shouting everyday when he came to the office, when he appeared by the window, by the door, came inside the office, went to his car or came from his car. Sometimes the organizers and pickets would be yelling and screaming obscenities and chanting phrases directed towards him. By this day, Wednesday he had heard it so many times that he knew it didn't mean anything to him; he had conditioned himself not to take anything that was said personally.

Although the Complaint alleges that Celia Hernandez was physically followed by the demonstrators, her testimony was not convincing in that regard. On direct examination she testified that as she exited by the doorway through which she had entered, she did not look at the demonstrators, but

turned to her left, walked past the vacant office adjoining the Board's office, on past the Karate Studio next adjoining and on toward the parking lot. She heard voices yelling: "What are you doing here, sell-out?"; "For how much money did you sell yourself to the boss, Mexican sell-out?"; "Ariba"; "Out with the boss' money." She stated that the whole group followed her as far as the Karate Studio [a distance of several yards] and that one man followed her beyond that for an overall distance of 11 yards from the entrance to the Board's office to the north end of the Karate Studio and its brick commonwall with the next store.

On cross-examination, however, the accuracy and reliability of Ms. Hernandez' perception suffered in the following exchanges with Respondent's counsel;

Q. How many people were picketing when you came out of the A.L.R.B. office?

A. I did not count. But according to the group I imagine ten or 12.

Q. Were they the same people?

A. Yes.

Q. Had you ever seen -- were they the same people as when -- as were there when you went in?

A. I do not know because I didn't turn around to see them.  
(Hearing Transcript/ at 192, 11. 15-23)

. . .

Q. Now, you stated that everyone in the picket line followed you as you came out of the door.

A. Yes.

Q. Did the picket line break its circle and everybody just scramble on behind you?

A. All I know is that they were following me. I don't know if they were walking in a circle or walking separately, (Hearing Transcript, at 193, 11. 2-8.)

. . .

Q. The whole group of picketers was about three yards or that distance behind you?

A. They walked together with me, and when I was walking there they were directly behind.

Q. How far behind?

A. About three yards. (Hearing Transcript at 196, 11. 4-9).

. . .

Q. And the one person who followed you, followed you a little further?

A. Yes.

Q. But this whole time you didn't turn around, you could just sense people behind you?

A. Their presence, I felt them, on one side of rue when I came out of the door, and when they followed and yelling behind me. (sic).

Q. And you never turned around?

A. Until I was really far away from — on the lot, then I turned. I seen the young man with the bandanna on his head.

Q. Do you recall a declaration that you gave that was turned in insupport of the Unfair Labor Practice charge in this case?

. . .

A. Yes.

. . .

Q. Do you recall that in your declaration you stated, "As I walked away one of the picketers even followed me. "?

A. Yes.

Q. Do you recall that your declaration does not say anything about the rest of the picketers following you?

A. [The lawyers] did not ask me. (Hearing Transcript, at 197, 1. 25; 198, 11. 1-12, 15, 20-25)

Nor was the witness rehabilitated on re-direct by counsel for the Charging Party in this exchange:

Q. When the group of picketers was following you how far away was the closest person of that group?

A. All I can say, I know they were close. I did not turn to see, (emphasis added)

Q. Looking at the chart, Ms. Hernandez, the group followed you from the door of the A.L.R.B. office to the point on the map by the Karate Studio where you have made a mark. [Mark appearing on GCX-1E at end of solid line also terminating at the entrance to Board's office.]

A. Yes. (Hearing Transcript, at 206, 11. 18-25) The subject of the group's following of the witness terminated with this exchange between Ms. Hernandez and the hearing officer:

Q. (By Hearing Officer) Ms. Hernandez, how do you know they followed you to that point if you didn't turn around?

A. I could feel by the sound of their voices.

Q. And you estimate that the — you don't know how — actually how close they were to you?

A. No.

Q. Now, earlier you gave us a distance of about three yards. What does that distance refer to?

A. By the voices.

Q. So you estimate that they were about three yards behind you by the sound of their voices?

A. I could see they were walking next to me until they got to the distance I pointed out or drew out there on the map. When I came out of the door they started walking at me, but I did not turn to look at them.

Q. And did they walk next to you for several yards?

A. They were all scattered.

Q. Were any of them in front of you?

A. The whole group was following me. I don't know who was next to me or what. (Hearing Transcript, at 207, 11. 5-25)

Finally, Ms. Hernandez testified that when she was really far away and on the parking lot she turned and saw a lean, tall young man, who, with a red bandanna on his head, cupped his hands to his mouth and yelled "Long live the boss money," as he stood on the sidewalk in front of the Karate Studio near its commonwall with the Sprouts-Reitz store. He appeared to be separated from the rest of the demonstrators by about 4 or 5 yards and about 11 yards distant from the door to the Board's office.

Throughout her encounter with the pickets Ms. Hernandez heard no one mention, shout or otherwise call her name; nor did anyone threaten her with any harm.

#### Discussion of the Issues and Conclusion

The first issue for discussion is whether the General

Counsel and the Charging Party have shown by a "preponderance of the testimony" that agents of the Respondent followed Celia Hernandez upon her departure from the Board's office. After a very close and critical reading of the transcript and my recollection of the witness' demeanor while testifying concerning this issue, I find that the General Counsel and Charging Party have not carried their burden of proof. Under close questioning by several attorneys at the hearing Ms. Hernandez admitted: That she did not know whether those people picketing when she came out of the office were the same as those picketing when she went in because on her way out she didn't turn around to see them; that over a following distance of five or six yards she sensed that the whole group of pickets remained about three yards behind; that all the time she sensed people following her she did not turn around to see them until she was far away and on the parking lot; that she didn't know how close the pickets were to her; that she estimated the aforementioned three yards by the sound of voices; that as she was walking away from the office the pickets were all scattered; and that she didn't know as she was walking away who was next to her or what.

On the basis of such confusing and contradictory testimony I find that at mid-day in a large shopping center there was no following of the witness by any group of Respondent's agents.

As to the additional yards covered by the tall and lean young man, again I find there was no following of Celia Hernandez. Ten to fifteen people picketing in a circle could easily encompass a diameter of roughly ten yards, taking note of the fact that a person's walking stride is approximately two to three feet. I am convinced that Ms. Hernandez noticed this individual more because of his height and his parting comment to her, than because of any deliberate following of her as she departed.

A good example of following by individuals which constitutes conduct that should be considered coercive and intimidating is briefly described in the case summary attached to the letter, on file herein, of October 28, 1977, of the Charging Party's counsel wherein two employees followed a supervisor's car at night for a distance of fourteen miles all the way to the end of a dead-end country road.

The second issue is whether the Respondent's agents shouted insults and made derogatory statements as described herein. I so find based not only upon the fact that Mr. Adair testified that he was on the picket line about the time Ms. Hernandez arrived and that he knew an employee of the Charging Party was coming to the Board's office, but also upon the substance of certain of the derogatory statements and shouts that were more than likely directed at Ms. Hernandez and not the Board's agents, eg., "scab" and "What are you



doing here?". A resolution of the question whether the shouting and name-calling by Respondent's agents constitutes restraint and coercion of agricultural employees in the exercise of their rights as guaranteed in Section 1152 necessitates a discussion not only of that section, but also of Section 1155<sup>2</sup> and the applicable standard of conduct.

Section 1152, guarantees agricultural employees the right to self-organization and to engage in concerted activities for mutual aid and protection as well as the right to refrain from any or all of certain other activities set forth in that section.

There can be no question of whether any agricultural employee has a right to unrestrained access to the offices of the Board for the purpose of finding out information concerning his or her other rights and/or duties under the Act. This right of access must be an obvious and essential corollary to the rights enumerated in Section 1152. Celia Hernandez was obviously seeking to act within her statutory rights when she met the union pickets on May 4th, at the Board's office.

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"The expressing of any views, arguments, or opinions, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute evidence of an unfair labor practice under the provisions of this part, if such expression contains no threat of reprisal or force, or promise of benefit."(emphasis added) Labor Code, Section 1155.

The Charging Party puts forth the argument that this employee right of access to information should be considered of great importance when balanced with the protections of Section 1155. However, the Charging Party and the General Counsel must recognize that this right to seek and receive information has its roots in the same Section 1152, which is the source of an agricultural employees right not to engage in concerted activities, eg., the "right to cross a persuasional picket line at the place of employment. Therefore, I see no reason why Section 1155 as applied to speech in the situation where non-union employees confront pickets at the place of employment should have any more constricting application to speech .in the context of a confrontation at the Board's office where the pickets were not "present for the purpose of discouraging the witness from seeking Board assistance. To do so would have an impermissably chilling effect upon a union's statutory rights under Section 1155, to say nothing of its state and federal Constitutional rights (Cal. Const. Art. I, §2; U.S. Const., amend. 14).

The briefs of the parties cite several seemingly contradictory cases, however those cases having full texts available for review, ie., Youngdahl v. Rainfair, Inc., 355 U.S. 131, 2 L.Ed. 2d 151, 78 S. Ct. 206 (1957) and United Mechanics' Local 151 N.L.R.B. 386 (1965) are in agreement that the statutory protection afforded the expression of views and opinions applies to disputes except where that expression becomes intimidation and incitement to violence. 355 U.S. at 138, 2 L.Ed. 2d at 156; 151

N.L.R.B. at 394, fn. 20. The late Supreme Court Justice Hugo Black has provided us with some insight into the meaning of this rule:

When Congress passed the National Labor Relations Act, it must have known, as almost all people do, that in labor disputes both sides are masters of the arts of vilification, invective and exaggeration. In passing this law Congress indicated no purpose to try to purify the language of labor disputes or force disputants to say nice things about one another. *Linn v. Plant Guard Workers*, 383 U.S. 53, 67-68, 15 L.Ed. 2d 582, 593, 86 S. Ct. 657 (1965) (Mr. Justice Black, dissenting).

In a trio of cases decided by the Board and cited by the Charging Party in his brief, the Board has held that in evaluating whether an employer's conduct restrains or coerces an agricultural employee in the exercise of his or her rights under the Act, the correct standard to be applied in analyzing such unfair labor practice charges is an objective one, ie., whether the employer engaged in conduct which may reasonably be said to constitute restraint or coercion. Dan Tudor and Sons, 3 ALRB No. 69 (1977)., at 2; Anderson Farms 3 ALRB No. 67 (1977}, at 20; and Merzoian Brothers, 3 ALRB No. 62 (1977), at 3.

Inasmuch as the Board shall follow applicable precedents of the National Labor Relations Act, as amended, (California Labor Code, Section 1148) I believe N.L.R.B. v. Drivers Local Union, 362 U.S. 274, 4 L.Ed. 2d 710, 80 S. Ct. 706 (1960) to be, in part, analogously instructive. That case

concerned the question

whether peaceful picketing by a union [can be considered] conduct of the union "to restrain or coerce" the employees in the exercise of rights guaranteed in §7, and thus an unfair labor practice under §8(b) (1)(A) of the National Labor Relations Act, as amended by the Taft-Hartley Act. (footnotes omitted)<sup>3</sup>

The Court reviewed the Senate Debate on the language of this Section of the Taft-Hartley Act amending Section 8 of the National Labor Relations Act. It felt that "[t]he note repeatedly sounded is as to the necessity for protecting individual workers from union organizational tactics tinged with violence, duress or reprisal." Id. at 286, 4 L.Ed. 2d at 719. (emphasis added). Concluding, the United States Supreme Court held "that §8(b)(1)(A) is a grant of power to the Board limited to authority to proceed against union tactics involving violence, intimidation, and reprisal or threats thereof--- conduct involving more than the general pressures upon persons employed by the affected employers implicit in economic strikes." Id. at 290, 4 L.Ed. 2d at 721.

I see no reason why the 'same objective standard applied previously by the Board should not be used to measure the conduct of Respondent's agents which has a tendency to restrain or coerce the same employees in the exercise of

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<sup>3</sup> Section 7, as amended by the Taft-Hartley Act is identical in language to Labor Code, Section 1152; Section 8 Cb] (1) (A) has the same language as Labor Code, Section 1154 (a) (1) .

similar rights. Indeed, the equal protection clause of the California constitution requires no less. Art. I, §7(a). Considering the language of the derogatory statements and insults shouted at Celia Hernandez, the fact that there was no evidence that those involved were either neighbors or former friends (See 355 U.S. at-138-39, 2 L.Ed. 2d at 156), that no one said they were going to harm her in any way (Hearing Transcript, at 209, 11. 3-5), that there were no more than roughly a dozen pickets involved, that Ms. Hernandez' name was not shouted by the pickets so as to threaten her with any further social ostracism (151 N.L.R.B. at 394, fn. 20) that she may already have brought upon herself by virtue of her admitted strike-breaking activity, that the confrontation took place at mid-day in. a large shopping center and not in the neighborhood of her residence, and the fact that the pickets separated and allowed her access to the Board's office upon her approach, I do not find that the shouting and name calling could reasonably have provoked any violence. Violence was not imminent on this occasion. Respondent's organizers and supporters on the picket line, when confronted with the person of Celia Hernandez, a self-acknowledged strike-breaker acted quite reasonably and predictably within the context of the circumstances by calling her a "scab," and a "sell-out," by asking her what she was doing coming to the office and by alluding to her

involvement with the boss' money. Although it may not have been nice for the demonstrators to have shouted as they did, their speech was well within the protection of the Act.

The question of the alleged threat of picture-taking remains. On direct examination Ms. Hernandez testified that she heard a boy say "take a picture" as she sat in the Board's office waiting for Mr. Rodriguez to appear. On cross-examination, she changed her statement to "take her picture". Then again she admitted she didn't know if someone shouted or said the phrase or whether it was a male or female voice.

In the context of an unfair labor practice complaint, a union cannot be held liable for conduct of alleged union agents who threaten, restrain or coerce employees where the alleged misconduct cannot be attributed to the union. Identities of those making the threats must be established. See Teamsters Union (Strauss Paper Company) 57 LRRM 1241 (1964} . Since no sufficient evidence exists to attribute the' alleged misconduct to union representatives or agents, there has been no violation of the act in this case.

Assuming, arguendo, that the statement could be attributed to union representatives or agents, the equivocation of the witness, ie., "take a picture"/"take her picture", and her admission that she did not see who made the statement, prevented the General Counsel from meeting his burden of

proof of establishing that what was said even, referred to the witness Hernandez.

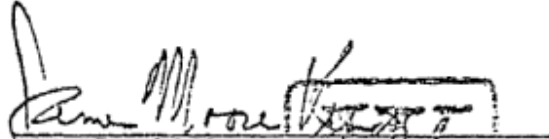
In any case, the Charging Party has misstated the law in his brief, at 11. Neither case cited holds that the mere-threat to take a photograph of an employee engaging in protected activity is unlawful. The better view, of course, is to resolve the issue by answering the question: Does the statement "take a picture" or "take her picture", considering all the facts and circumstances of the case, constitute conduct which would reasonably cause fear and tend to intimidate? I think not. See Section 1155.

THEREFORE, upon the basis of the entire record, the findings of fact and conclusions of law, and pursuant to Section 1160.3 of the Act, I hereby recommend that the allegations of the complaint charging violations by Respondent of Section 1154 (a). (1) by shouting insults at, making derogatory statements to, and physically following an agricultural employee, Celia Hernandez, while Celia Hernandez was engaged in the exercise of her rights protected by Section 1152 of the Act, be dismissed.

Although I do not view the testimony to have made out a complaint of a substantial nature, inasmuch as this is apparently a case of first impression, and perhaps more

deserving of a hearing for that reason, I do not recommend that attorney's fees be awarded to the Respondent. However I do recommend that they be awarded their costs.

Dated: November 30, 1977

  
JAMES MOORE KING  
Administrative Law Officer  
